

Karen A. Confoy  
Christopher R. Kinkade  
Allison L. Hollows  
**FOX ROTHSCHILD LLP**  
Princeton Pike Corporate Center  
997 Lenox Drive  
Lawrenceville, NJ 08648-2311  
Telephone: (609) 896-3600  
Facsimile: (609) 896-1469

Ruben C. DeLeon (*pro hac vice*)  
**DELEON LAW GROUP**  
13601 Preston Road, Suite E920  
Dallas, TX 75240

Aubrey D. (Nick) Pittman (*pro hac vice* pending)  
**THE PITTMAN LAW FIRM, P.C.**  
100 Crescent Court, Suite 700  
Dallas, TX 75201

Valerie Yanaros Wilde (*pro hac vice*)  
**YANAROS LAW, P.C.**  
5057 Keller Springs Road Suite 300  
Addison, TX 75001

*Attorneys for Defendant/Counterclaimant America Can!*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

KARS 4 KIDS INC.,

Plaintiff,

v.

AMERICA CAN!,

Defendant.

Case No. 3:14-cv-07770-PGS-LHG

**DECLARATION OF KAREN A.  
CONFOY IN SUPPORT OF  
DEFENDANT AMERICA CAN!'S  
OPPOSITION TO PLAINTIFF KARS 4  
KIDS INC.'S MOTION IN LIMINE NO. 1**

*Filed Electronically*

I, Karen A. Confoy, Esq., do hereby declare as follows:

1. I am a partner at Fox Rothschild LLP, attorneys for Defendant/Counterclaimant America Can! (CFK) in the above captioned matter. I submit this declaration in support of CFK's

Opposition to Plaintiff Kars 4 Kids, Inc.'s Motion in Limine No. 1 to Exclude the Entirety of Bryce R. Cook's Opinions. I have knowledge of the following, and if called as a witness, could testify competently hereto.

2. Attached hereto and made a part hereof as **Exhibit 1** is a true and accurate copy of excerpts of the deposition transcript of Bryce R. Cook.

3. Attached hereto and made a part hereof as **Exhibit 2** are true and accurate copies of email correspondence, marked with Bates Nos. CAN-00001124-26; CAN-00008759-60; CAN-00009017-18; CAN-00076205; CAN-00077500; CAN-00100984; CAN-00066086-88; CAN-00005639-40; CAN-00005624; CAN-00005627-28.

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing statements are true and correct.

Executed on: February 28, 2019

s/ Karen A. Confoy  
Karen A. Confoy

# Exhibit 1

*KARS 4 KIDS INC. VS.  
AMERICA CAN!*

---

*BRYCE R. COOK  
March 15, 2018*

*Highly Confidential - Pursuant to Protective Order*

---



126 East 56th Street, Fifth Floor New York, New York 10022  
P: 212-750-6434 F: 212-750-1097  
[www.ellengrauer.com](http://www.ellengrauer.com)

*Original File 116968.TXT  
Min-U-Script® with Word Index*

Highly Confidential - Pursuant to Protective Order

1

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF NEW JERSEY

3 -----x  
KARS 4 KIDS INC.,

4 Plaintiff,

5 -vs.-

6 AMERICA CAN!,

7 Defendant.

8 Civil Action No. 14-7770

9 -----x  
10 \* \* \* HIGHLY CONFIDENTIAL \* \* \*

11

12 2333 East Thomas Road  
13 Phoenix, Arizona

14 March 15, 2018  
15 9:39 a.m.

16 The Videotaped Deposition of BRYCE R. COOK,  
17 taken before Amy L. Zoller, a Certified Reporter,  
18 Certificate No. 50911, for the State of Arizona.

19

20

21

22  
23 ELLEN GRAUER COURT REPORTING CO, LLC  
24 126 East 56th Street, Fifth Floor  
New York, New York 10022  
212-750-6434  
25 REF: 116968

1 COOK - HIGHLY CONFIDENTIAL

2 consistently used its Cars for Kids Mark (the Mark) in  
3 interstate commerce and in connection with its charitable  
4 fundraising services.

5 Do you see that?

6 A. Yes.

7 Q. And is the basis for that also the allegations  
8 in America Can!'s Answer and Counterclaims?

9 A. Yes.

10 Q. You do not have any -- any personal knowledge  
11 of America Can!'s use of that designation -- withdrawn.

12 You do not have any personal knowledge of  
13 America Can!'s use of the designation Kars 4 Kids since  
14 1989, correct?

15 A. No personal knowledge of, for instance, actual  
16 advertising using the term. I did do an analysis of  
17 first to market, and I think that does give an indication  
18 of when -- at least when the company was in the -- in  
19 each state or each market. But I don't have -- I don't  
20 have personal knowledge and have not seen documents or  
21 advertisements using the mark.

22 Q. And we'll talk about this a little more later.  
23 But the first-to-market analysis you mentioned, that's  
24 the one based on when each party first received donations  
25 out of a given state; is that right?

1 COOK - HIGHLY CONFIDENTIAL

2 A. Correct.

3 Q. And the basis of that is not an analysis of any  
4 actual advertising done by any party, correct?

5 A. No, that's not the basis, no.

6 MR. LITTERINE-KAUFMAN: I think we're  
7 approaching an hour. So let's take a 10-minute break.

8 THE VIDEOGRAPHER: We are going off the  
9 record. The time is 10:34 a.m. Please mind your  
10 microphones, folks, when you leave. Thank you.

11 (Recess taken at 10:34 a.m. to 10:48 a.m.)

12 THE VIDEOGRAPHER: This is Tape Number 2 of  
13 the deposition of Bryce Cook. We are now back on the  
14 record at 10:48 a.m. on March 15, 2018.

15 Q. (BY MR. LITTERINE-KAUFMAN:) Please take a look  
16 at page 2 of your opening report.

17 A. Okay.

18 Q. What does the chart in the middle of page 2  
19 show?

20 A. It shows America Can! vehicle donation units  
21 from 1997 to the -- to 2017, which year is an estimate.

22 Q. Okay. So this is the number of vehicles  
23 donated to America Can! in each of those years; is that  
24 correct?

25 A. Yes.

1 COOK - HIGHLY CONFIDENTIAL

2 Q. America Can! saw a sharp decline in donations  
3 in 2005, correct?

4 A. Yes.

5 Q. And another sharp decline in donations in 2010,  
6 correct?

7 A. Yes.

8 Q. And America Can!'s donations then remained at  
9 low levels through 2015, correct?

10 A. Yes. Relative to its past, the prior years.

11 Q. Now, you agree that factors other than Kars 4  
12 Kids use of the mark caused at least some of the  
13 purported losses in donations by America Can!, correct?

14 A. Yes, I believe that's reasonable to assume.

15 Q. Okay. What other factors do you think caused a  
16 decline in America Can!'s donations?

17 A. Well, I haven't studied specifically causation  
18 elements. But, you know, we could -- we could assume  
19 that economic factors caused decline. In 2005, obviously  
20 there was the tax change on deductibility of car  
21 donations that had a big impact. The recession and  
22 subsequent higher demand for used vehicles in 2010 and  
23 thereon -- thereafter had -- likely had an impact. And  
24 there could be, you know, impact from other car donation  
25 organizations that participate in this market.

1 COOK - HIGHLY CONFIDENTIAL

2 Q. Okay. Did you do any analysis of how much any  
3 of those factors contributed to any decrease in donations  
4 to America Can!?

5 A. No.

6 Q. Do you have any opinion on how much any of  
7 those factors contributed to any decrease in donations to  
8 America Can!?

9 A. No.

10 Q. One of the factors you mentioned that  
11 potentially affected donations to America Can! was a  
12 recession; is that right?

13 A. Yes.

14 Q. Okay. And when did that recession occur?

15 A. The recession officially, according to the  
16 Bureau of Economic Analysis, started in December 2007 and  
17 hit bottom in 2009.

18 Q. Is it your opinion that the recession was, to  
19 some extent, responsible for America Can!'s low levels of  
20 donations in 2010 through 2015?

21 A. I believe it would have had an impact in some  
22 of the earlier years following the recession. But, for  
23 instance, when you look at America Can!, it begins to  
24 recover in 2013, maybe even 2012. Let me see one moment.  
25 Did I -- Kars 4 Kids.

1 COOK - HIGHLY CONFIDENTIAL

2 So I'm looking at my chart on 7, which compares  
3 the two. So you can see that Kars 4 Kids has a  
4 relatively big decrease in 2010, not as big as America  
5 Can!, and then another sizeable decrease in 2011, and  
6 then a very small decrease in 2012, and then begins to  
7 pick up in '13 and thereafter.

8 Whereas, America Can!, going back to the chart  
9 on page 2, is basically flat in 2013, the year that Kars  
10 4 Kids sees a sizeable increase and begins to recover.

11 Q. Okay. I guess I'll just ask my question again.  
12 So is your opinion that the recession was partly  
13 responsible for America Can!'s low level of donations in  
14 2010 through 2015?

15 A. Yes. And as -- just to restate my answer, in  
16 the early years, I believe it had more of an impact than  
17 in later years when, for instance, Kars 4 Kids was  
18 recovering, as well as the rest of the economy was  
19 recovering. America Can!'s donation levels still stayed  
20 somewhat low.

21 Q. And when do you think the effects of the  
22 recession on America Can!'s donation levels tapered off?

23 A. Well, if you use Kars 4 Kids as a benchmark,  
24 the effects of the recession seemed to last through about  
25 2012. And then their donations shoot up again

1 COOK - HIGHLY CONFIDENTIAL

2 thereafter.

3 Q. Are you -- so are you giving an opinion that  
4 the effects of the recession on America Can!'s donations  
5 ended in 2012?

6 A. No. I'm comparing to Kars 4 Kids to show what  
7 appears to be the effects of the recession have been  
8 overcome because Kars 4 Kids are -- their donations are  
9 growing again by 2013. And I believe that's consistent  
10 with economic indicators as well that the recovery is  
11 well along on its way. It begins in 2010, 2011 and 2012,  
12 and continues to pick up. There's some lag in the used  
13 car donation market that goes beyond just the recession.  
14 And I talk about those in the report as well. But the  
15 effects of the recession, at least as felt by Kars 4  
16 Kids, again seems to be over by 2013. So I would say  
17 that -- that seems to be generally consistent with what's  
18 going on in the economy and would likely have had  
19 negligible effect, if any, on America Can! in that same  
20 time frame. So there would be other factors besides the  
21 recession in 2013 that is keeping America Can!'s vehicle  
22 donations at low levels.

23 Q. Have you done any analysis of the extent to  
24 which the recession caused a decline in America Can!'s  
25 vehicle donation levels for any year?

1 COOK - HIGHLY CONFIDENTIAL

2 A. Well, I looked at vehicle donations as compiled  
3 by the IRS that Mr. Hall cited in his report, and I did  
4 some additional analysis on that in my second report. I  
5 also looked at used car sales which I cite in one of the  
6 footnotes. Footnote 5 is an article that has used car  
7 sales and talks about the issues impacting that.

8 Q. Are you familiar with the term "causal  
9 relationship"?

10 A. Yes.

11 Q. What do you understand it to mean?

12 A. It's cause and effect. Something that actually  
13 has a cause on -- something acts to cause an action.

14 Q. Okay.

15 A. A result.

16 Q. And are you familiar with the term  
17 "correlation"?

18 A. Yes.

19 Q. And do you understand there to be a distinction  
20 between a correlation and a causal relationship?

21 A. Certainly.

22 Q. What is that distinction?

23 A. Correlation means two events or two impacts may  
24 occur simultaneously. But that does not necessarily mean  
25 that one was caused by the other.

1 COOK - HIGHLY CONFIDENTIAL

2 Q. Okay. And so have you done any analysis that  
3 would establish the extent of any causal relationship  
4 between the recession and a decline in America Can!'s  
5 donations in any year?

6 A. Yeah. I think conceptually, we understand --  
7 and I think this is a very elementary understanding --  
8 that the recession has a causal effect on personal income  
9 and therefore on people's willingness to donate. You can  
10 see that. It's in articles, one of the articles that I  
11 cited. So I believe there is a causal effect from the  
12 recession on car donations.

13 Q. And just to be clear then, so the process  
14 you're describing is the recession causes household  
15 incomes to go down. And the decrease in household  
16 incomes causes a decrease in car donations. Is that  
17 right?

18 A. Yes.

19 Q. Another factor you mentioned that potentially  
20 affected donations to America Can! was an increase in the  
21 value of used cars. Is that right?

22 A. Yes.

23 Q. Okay. And your opinion is that an increase in  
24 the value of used cars was partly responsible for America  
25 Can!'s low levels of donations in 2010 through 2015. Is

1 COOK - HIGHLY CONFIDENTIAL

2 that right?

3 A. It could have been. I don't know how long that  
4 went on because, again, I would -- just as the effects of  
5 the recession seem to loosen up on Kars 4 Kids in 2013  
6 and thereafter, I would say the same thing about the  
7 value of used cars. It seemed not to have as much of an  
8 impact on Kars 4 Kids.

9 Q. Are you saying that the value of used cars  
10 declined in 2011 or 2012 or 2013?

11 A. No. It increased, is what my report says.

12 Q. If the value of used cars increases, that means  
13 that potential donors are less likely to donate vehicles;  
14 is that correct?

15 A. That's the -- the logic, yes, the reasoning.

16 Q. Okay.

17 A. And also I should say, the value is a  
18 reflection -- it's a two -- this is a two-way causation  
19 thing. Because it's also -- a higher value is a  
20 reflection that people want used cars and are holding on  
21 to used cars. So it's not just that cars are higher  
22 value, therefore people are going to retain them. It's  
23 also that they are retaining them because their personal  
24 incomes are lower and people -- and unemployment is  
25 higher. So there are less used cars in the market that

1 COOK - HIGHLY CONFIDENTIAL

2 makes lower supply, means you're going to have higher  
3 prices, higher value.

4 Q. So it's your opinion that an increase in the  
5 value of used cars caused fewer donations to go to  
6 America Can! in 2009; is that correct?

7 A. It would affect all donations in the US in --  
8 whenever this article says, 2009 to 2012, is at least  
9 cited in this article. So I believe that, yeah, roughly  
10 in that time frame, there would be some impact felt.

11 Q. Felt by America Can!?

12 A. By all participants in the car donation market.

13 Q. Including America Can!?

14 A. Yes. Of course. They're a participant in the  
15 market.

16 Q. Now, you said the article you cited covers the  
17 period 2009 to 2012. Do you have any opinion about the  
18 effect of the value of used cars on vehicle donations  
19 after 2012?

20 A. No. Other than, again, as I said on the  
21 recession, if you use Kars 4 Kids as a benchmark, it's  
22 growing again very -- at a very healthy rate starting in  
23 2013. So whatever impact the economy or the value of  
24 used cars has is -- is overcome by Kars 4 Kids' growth.

25 Q. Now, Kars 4 Kids' growth in that period time,

1 COOK - HIGHLY CONFIDENTIAL

2 there are a number of factors that could be responsible  
3 for that, correct?

4 A. Yes.

5 Q. They could have changed their advertising  
6 strategy, for example, to a more effective advertising  
7 strategy; is that right?

8 A. There could be, yeah, company decisions,  
9 advertising strategies, certainly.

10 Q. Okay. So it's not necessarily the case that an  
11 increase in Kars 4 Kids -- in donations received by Kars  
12 4 Kids means that the effects of an increase in the value  
13 of used cars have diminished or ended, correct?

14 A. Not necessarily. But what it shows is that  
15 whatever effects the recession and the value of used cars  
16 has, is outpaced by whatever it is that Kars 4 Kids is  
17 doing.

18 Q. But that -- those -- that could be unique to  
19 Kars 4 Kids, correct?

20 A. It could. Sure.

21 Q. What percentage of the decrease in America  
22 Can!'s car donations was caused by the recession?

23 A. I believe we've already talked about this. I  
24 haven't quantified the specific impacts. I'm not doing a  
25 causation actual damages lost profit calculation. If I

1 COOK - HIGHLY CONFIDENTIAL

2 were, then I would need to isolate the cause and effect  
3 and the impact on car donations that was caused by the  
4 wrongful conduct. I'm not doing that here, so I haven't  
5 disaggregated all those factors and quantified each  
6 individual impact. If that will save any time and  
7 additional questions you have on the factors. I'm  
8 opining on generally there was a decline, and some of  
9 that is likely even, as I said in my second report,  
10 inescapably due to Kars 4 Kids being in the market.

11 Q. And I think you've answered this question  
12 already, but just to be clear, what percentage of the  
13 decrease in America Can!'s car donations was caused by an  
14 increase in the value of used cars?

15 A. I just answered that question. I didn't  
16 quantify specific impacts.

17 Q. Okay.

18 A. Because that's not what is required in the --  
19 in the monetary remedy that Kars 4 Kids is -- or America  
20 Can! is claiming.

21 Q. Are you saying that's not required by cases  
22 interpreting the Lanham Act?

23 A. My understanding is that you don't need to show  
24 how much the trademark caused in actual damages. The  
25 claim is for -- seeking unjust enrichment. Not actual

1 COOK - HIGHLY CONFIDENTIAL

2 damages.

3 Q. Sorry. So that's your understanding of the  
4 holdings of various cases interpreting the Lanham Act?

5 A. Well, yes. Unjust enrichment is not actual  
6 damages, right? I think we can agree on that. It's  
7 looking at the profit and gain of the defendant for  
8 unlawful use of the mark.

9 Q. I --

10 A. That's what we're trying to determine here.  
11 And I have included an analysis of the markets and the  
12 donations of each because one factor that is addressed in  
13 one seminal case that Mr. Hall cites called Banjo Buddies  
14 is whether sales were diverted. And so I've done this  
15 analysis to show indications of where that could have  
16 happened and what could have been the cause of those  
17 diverted sales. But I haven't quantified specifics.  
18 Because in Banjo Buddies, for instance, the Court said it  
19 is likely that sales are diverted. And that wasn't even  
20 based on looking at markets or sales. That was simply  
21 based on factors such as similar, you know, advertising  
22 channels, targeting similar customers, and being in the  
23 same market.

24 Q. The reason I ask is just that you testified  
25 earlier that a quantification of the effects of specific

1 COOK - HIGHLY CONFIDENTIAL

2 factors is not what's required in the monetary remedy  
3 that America Can! is claiming. And it just sounded to me  
4 like you were interpreting case law there, explaining  
5 what needs to be proven to establish the amount of a  
6 monetary remedy.

7 A. I actually have some direct quotes that say  
8 that. So I didn't need to do any interpretation. I  
9 mean, we can go to I believe it's Footnote 9 in my second  
10 report that specifically says that.

11 Q. You're quoting from judicial opinions?

12 A. Yes, yes.

13 Q. Okay. I -- okay.

14 A. It you'd like, we could go there rather than  
15 trying to see what my opinion is, and I can show you what  
16 it is that I've cited that says that you don't need to  
17 specifically quantify.

18 Q. I think that I will leave interpretation of  
19 case law to the judge. So I'm not going to engage in a  
20 debate over what the opinions you've cited mean.

21 A. Yeah, I'm -- I agree. I'm not trying to say  
22 what they mean. I'm simply citing them.

23 Q. Okay. Now, I think you testified earlier that  
24 there was a sharp decline in America Can!'s donations in  
25 2005 as well. Is that correct?

1 COOK - HIGHLY CONFIDENTIAL

2 A. Yes. That's what the chart and the data show.

3 Q. What factors do you believe caused the sharp  
4 decline in America Can!'s donations in 2005?

5 A. I believe I already answered that question.

6 Which I'll give it again. But there was a change in IRS  
7 regulations regarding the claimability of donations or  
8 how much can be claimed as a deduction for a donation.

9 Q. But you have not quantified the impact of that  
10 change in tax law on America Can!'s donations, correct?

11 A. As I've indicated, I haven't quantified any of  
12 the impacts.

13 Q. Have you identified any specific donations to  
14 Kars 4 Kids that you believe would have gone to America  
15 Can! but for Kars 4 Kids' use of its mark?

16 A. Did you say any specific donations?

17 Q. I did.

18 A. No, I haven't.

19 Q. If you could take a look at your reply report,  
20 which is Exhibit 2. Turn to page 3.

21 A. Okay.

22 Q. The final sentence in the second paragraph  
23 says: However, there is more than adequate evidence to  
24 conclude that K4K likely diverted donations from America  
25 Can! which per Banjo Buddies is a factor to be considered

1 COOK - HIGHLY CONFIDENTIAL

2 in an award of defendant's profits.

3 Do you see that?

4 A. Yes.

5 Q. What is the more-than-adequate evidence you're  
6 referring to?

7 A. In addition to the similarities in -- well,  
8 it's the exact same mark. Similar to Banjo Buddies.  
9 Kars 4 Kids and America Can! compete in the exact same  
10 market, which is seeking donations of vehicles for the  
11 purpose of helping disadvantaged kids, youth; and the use  
12 of similar advertising methods and channels and in the  
13 same geographic areas. So those are all the evidence.  
14 And then I would say there's quantitative evidence, even  
15 though I haven't specifically identified what that exact  
16 impact is, but comparing America Can!'s donations to Kars  
17 4 Kids, vis-a-vis the recession and other general  
18 impacts, looking at advertising of the two companies, all  
19 of those are strong evidence to indicate that there were  
20 likely diverted donations.

21 Q. Okay. So the first -- well, let me just make  
22 sure I have them all. So you said similarities in  
23 marketing, is that correct, is one of the --

24 A. Yeah, I would say the -- I would say the same  
25 market. They're in the exact same market.

1 COOK - HIGHLY CONFIDENTIAL

2 Q. Okay. So the same market.

3 A. Uh-huh.

4 Q. Also, that the purpose of donating to each  
5 charity is to help children. Is that -- that's another  
6 piece of evidence you believe supports a finding of  
7 diverted donations?

8 A. I wouldn't say supports a finding. I'm not  
9 going to opine on, you know, legal rulings, but I would  
10 say supports the conclusion that there were -- there  
11 would likely be a diversion of some sales, some portion  
12 of -- or donations, some portion of America Can!'s  
13 donations to Kars 4 Kids.

14 Q. Okay. And then did you say similarities in the  
15 designations used by the two charities? I'm  
16 paraphrasing, but was that one of the factors?

17 A. By designations, what do you mean?

18 Q. I mean the phrase, Cars for Kids, spelled with  
19 a C, and Kars 4 Kids, spelled with a K and the number 4?

20 A. I didn't say that, but I think that's -- that's  
21 reasonable. That's a reasonable assumption.

22 Q. Okay. And then you said quantitative evidence?

23 A. Right. Looking at the actual donations of the  
24 two organizations, the first-to-market analysis, for  
25 instance. And also the advertising spend of both.

1 COOK - HIGHLY CONFIDENTIAL

2 Q. Okay. Is there any other evidence that leads  
3 you to conclude that donations were likely diverted from  
4 America Can! to Kars 4 Kids?

5 A. Let's see, I mentioned the similarity of the  
6 advertising methods and channels.

7 Q. Anything else?

8 A. I think that's it.

9 Q. Okay.

10 A. It is mentioned -- I do mention it several  
11 times in my report, and I believe in both reports, so if  
12 I missed anything that's in the report, I would amend my  
13 response to include whatever I've opined on in the  
14 report.

15 Q. Sure. I just want to make sure that we discuss  
16 each of the pieces of evidence that you've described. So  
17 if you think of another, please let me know.

18 A. Sure.

19 Q. So one of the ones you said, then, is that Kars  
20 4 Kids and America Can! compete in the same geographic  
21 market. Is that right?

22 A. Yes.

23 Q. Okay. And what is the geographic market in  
24 which they compete?

25 A. Every state in the United States.

1 COOK - HIGHLY CONFIDENTIAL

2 Q. Okay. How do you define a market?

3 A. I'm just using each state as an individual  
4 market.

5 Q. Okay. What basis do you have to define a  
6 market as a state?

7 A. That's how each of the organizations quantifies  
8 their donations is on a state-by-state basis.

9 Q. Quantifies where?

10 A. Their donations on a state-by-state basis in  
11 their databases in their tracking of their donations.

12 Q. So you don't think, for example, a metropolitan  
13 area could be defined as a market?

14 A. Certainly it could.

15 Q. Okay. Do you know if America Can! and Kars 4  
16 Kids are advertising in all of the same metropolitan  
17 areas?

18 A. That, I don't have personal knowledge of.

19 Q. And did you do any analysis of the extent to  
20 which America Can! and Kars 4 Kids are operating in  
21 overlapping markets?

22 A. Well, it's -- I think that's a -- that  
23 conclusion is borne out by the fact that they all have  
24 donations in the same states.

25 Q. Okay. So if you define a market as a state,

Highly Confidential - Pursuant to Protective Order

62

1 COOK - HIGHLY CONFIDENTIAL

2 then they all have donations from the same states?

3 A. Yes.

4 Q. Okay. Do you know whether or not America Can!  
5 and Kars 4 Kids are all advertising in the same states?

6 A. Presently or any time in the period of the  
7 infringement?

8 Q. At any time in the period covered by your  
9 report.

10 A. I don't have personal knowledge of ad campaigns  
11 and what was done in each market.

12 Q. And by market, you mean state?

13 A. Yes.

14 Q. America Can! has other direct competitors in  
15 the same geographic markets, correct?

16 A. Yes.

17 MS. YANAROS WILDE: Object to form.

18 MR. LITTERINE-KAUFMAN: What's wrong with  
19 the form?

20 MS. YANAROS WILDE: It -- you were  
21 misstating testimony.

22 A. I'm sorry, can you ask the question again?

23 MR. LITTERINE-KAUFMAN: Okay. I don't  
24 believe I was describing testimony.

25 Q. (BY MR. LITTERINE-KAUFMAN:) But America Can!

1 COOK - HIGHLY CONFIDENTIAL

2 has other direct competitors in the same geographic  
3 markets, correct?

4 A. In its -- in its geographic markets, yes, it  
5 does.

6 Q. Okay. Did you do any analysis of what the  
7 effect of America Can! having other direct competitors in  
8 the same geographic markets is?

9 A. I didn't quantify the specific amount, as I've  
10 already indicated.

11 Q. And did you do any analysis of the effect of  
12 Kars 4 Kids and America Can! being direct competitors in  
13 the same geographic markets?

14 A. No, not -- well, the effect of America Can! --  
15 or Kars 4 Kids being in America Can!'s market? I guess  
16 when you do a side-by-side comparison, which I do in, you  
17 know, a number of charts as well as in table -- in my  
18 second report, Table 7 on page 13, that gives an  
19 indication of the amount of sales that we could be  
20 talking about -- or I'm sorry, I keep saying sales; I  
21 mean donations. The amount of donations that at least  
22 we're starting from. But obviously some of the donations  
23 that Kars 4 Kids has obtained while America Can! has  
24 declined or stayed constant could be due to other  
25 factors. All of which we've discussed, but as I've said

1 COOK - HIGHLY CONFIDENTIAL

2 multiple times now, I haven't quantified the relative  
3 impact of each, including Kars 4 Kids.

4 Q. Okay. I think another piece of evidence you  
5 cited that leads to your conclusion of diverted donations  
6 is that you believe Kars 4 Kids and America Can! used the  
7 same or similar advertising methods --

8 A. Yes.

9 Q. -- is that right?

10 What do you mean by the same or similar  
11 advertising methods?

12 A. Radio, print, TV, Internet.

13 Q. Do you know if America Can! uses direct  
14 mailing?

15 A. I don't recall. By print, I assume that means  
16 ads in publications such as newspapers and magazines as  
17 well as potentially direct mail, but I don't recall  
18 specifically every type of advertising method used.

19 Q. Have you done any comparison of the advertising  
20 methods used by America Can! and Kars 4 Kids?

21 A. No.

22 Q. So what leads you to say that they use the same  
23 or similar advertising methods?

24 A. That's my understanding from the pleadings.

25 Q. And I believe another piece of evidence that

1 COOK - HIGHLY CONFIDENTIAL

2 you believe leads you to conclude that donations were  
3 diverted from America Can! to Kars 4 Kids is that both  
4 America Can! and Kars 4 Kids engage in charitable giving  
5 to kids. Is that right?

6 A. Yes.

7 Q. America -- do you know what the mission of  
8 America Can! is?

9 A. You mean their explicit mission statement, or  
10 just generally what their charitable program is all  
11 about?

12 Q. What their charitable program is all about.

13 A. Yes, I do.

14 Q. And what is it?

15 A. It's operating schools, academies for  
16 underprivileged and underserved youth and at-risk youth.

17 Q. Where are those schools and academies?

18 A. In Texas. They've had some out of Texas, I  
19 understand in the past, but now they're located in Texas.

20 Q. Do you know how many they had outside of Texas?

21 A. I did at one point. I don't recall the number  
22 now.

23 Q. And do you know for how long they had schools  
24 outside of Texas?

25 A. I don't recall.

1 COOK - HIGHLY CONFIDENTIAL

2 Q. Okay. Do you know if there's any religious  
3 affiliation for the schools operated by America Can!?

4 A. In what I've seen, I have not run across that.

5 Q. Okay. Do you know what the general aim of Kars  
6 4 Kids charitable activities is?

7 A. Yes.

8 Q. Okay. And what is that?

9 A. That's to help Orthodox Jewish children kind of  
10 reconnect with their faith, in primarily New York and New  
11 Jersey, as I understand it, through special summer camps  
12 and programs, as well as tuition assistance for Orthodox  
13 Jewish private schools.

14 Q. Okay. Would you agree that those are different  
15 purposes?

16 A. When you get down to real specifics, they are.  
17 But the advertising Kars 4 Kids doesn't really get to  
18 that. The advertising that people really hear is this is  
19 -- these are donations that go to help kids.

20 Q. Do you think people do any reading about the  
21 charities after hearing advertisements and before  
22 donating?

23 A. I'm sure some do, yes.

24 Q. And do you think they would learn about the  
25 charities' respective purposes when they did that?

1 COOK - HIGHLY CONFIDENTIAL

2 A. Yes, I'm sure some could. And some might spend  
3 more time than others, some less time. And it may not be  
4 as clear without doing a lot of digging on the Kars 4  
5 Kids' side exactly the religious purposes of their  
6 charitable cause.

7 Q. Now, you say -- I'm looking at page 5 of your  
8 opening report, Exhibit 1. You say: Kars 4 Kids is a  
9 national organization dedicated to addressing the  
10 educational, material, emotional and spiritual needs of  
11 disadvantaged Jewish children and their families.

12 Do you see that?

13 A. Yes.

14 Q. And so you were able to find Kars 4 Kids'  
15 mission, correct?

16 A. Yes, that was -- yes, I believe that was on  
17 their website.

18 Q. So one could learn the mission simply by  
19 looking at Kars 4 Kids' website; is that correct?

20 A. Yes, I believe so.

21 Q. Okay. So --

22 A. But, again, I don't -- and I'm not opining on  
23 this, but I don't recall how easily that's seen. Whether  
24 someone would just look at the first page, and I don't  
25 know if -- I don't recall if the mission is explicitly

1 COOK - HIGHLY CONFIDENTIAL

2 stated on the first page and how big the font size is and  
3 all those kinds of things that, you know, unless you were  
4 really going to do some digging, you know, would you see  
5 that.

6 Q. But it is certainly at least available on the  
7 Internet?

8 A. Yes.

9 Q. So isn't it -- isn't it possible that a donor  
10 would want to support one of the charity's missions and  
11 would not want to support the other charity's mission?

12 A. I'm sure that could happen.

13 Q. Do you think it's likely that it has happened?

14 MS. YANAROS WILDE: Objection. Calls for  
15 speculation.

16 A. I would be speculating, but I think it's --  
17 it's a logical conclusion. Certainly there would be some  
18 people, for instance, that you know, are probably bigoted  
19 and wouldn't want to donate to a religious cause that's  
20 not their own faith, simply for that reason.

21 Q. (BY MR. LITTERINE-KAUFMAN:) And then another  
22 piece of evidence that we discussed in support of your --  
23 that you believe supports your conclusion that donations  
24 were diverted from America Can! to Kars 4 Kids is  
25 similarities between the phrase Cars for Kids, spelled

1 COOK - HIGHLY CONFIDENTIAL

2 with a C, and the phrase Kars 4 Kids, spelled with a K  
3 and the number 4; is that correct?

4 A. I don't believe I say that in my report. But I  
5 think that makes sense.

6 Q. I mean, I'm not trying to put words in your  
7 mouth. If you don't think that's a piece of evidence  
8 that supports it --

9 A. No, I would agree if someone were to make that  
10 statement that because they are exactly the same  
11 phonetically, that that would -- that would be a piece of  
12 evidence, yeah.

13 Q. Since you don't talk about it in your report  
14 then, fair to say that you haven't done any analysis of  
15 the extent to which those would be perceived as similar?

16 A. No, I haven't done any kind of confusion  
17 analysis, as I point out.

18 Q. Let's look at page 3 of your opening report,  
19 which is Exhibit 1.

20 A. Okay.

21 Q. And there's a chart on that page. What does  
22 that chart -- excuse me. What does that chart depict?

23 A. It shows America Can!'s vehicle donations from  
24 1997 through 2017 broken out between total, Texas  
25 donations and all other donations.

1 COOK - HIGHLY CONFIDENTIAL

2 Q. And what -- what does all other donations mean?

3 A. Anything outside of Texas.

4 Q. Can you tell from the chart or do you otherwise  
5 know how many donations America Can! received from  
6 outside Texas in the years before 2003?

7 A. From the chart, the scale is such that the  
8 numbers don't really show up. But you can go to the  
9 underlying data and it's less than a thousand. It's  
10 probably -- I know in some markets it's like ten per --  
11 per market or per state.

12 Q. So a relatively small number as compared to its  
13 Texas donations?

14 A. Right.

15 Q. And then -- all right. So then beginning in  
16 2003, America Can!'s donations from outside of Texas  
17 began to increase; is that right?

18 A. Yes.

19 Q. And they increased to a peak in 2007; is that  
20 right?

21 A. Yes.

22 Q. And in -- that 2007 peak was approximately  
23 4,000 vehicles?

24 A. Correct.

25 Q. And America Can!'s donations from outside of

1 COOK - HIGHLY CONFIDENTIAL

2 Texas then declined in 2008 through 2012; is that  
3 correct?

4 A. Yes.

5 Q. Was the decline in America Can!'s donations  
6 outside of Texas more pronounced than the decline of its  
7 donations from within Texas?

8 A. Yes. Substantially so.

9 Q. Do you have any opinion why America Can!'s  
10 donations from outside of Texas declined more sharply  
11 than its donations from Texas?

12 A. Well, one thing that we see when we look at the  
13 first-to-market analysis is that -- well, see -- well,  
14 America Can! was in each of these states and growing as  
15 we see through 2007. Kars 4 Kids at that same time is  
16 growing at even faster rates and had by 2004 -- 2003,  
17 2004, already surpassed America Can! in pretty much all  
18 of the states. So one conclusion that I would draw from  
19 that is that that fact, along with the fact that Kars 4  
20 Kids is spending substantially more on advertising, is  
21 one cause of America Can!'s decline in those non-Texas  
22 locations.

23 Q. Now, when you say that, are you assuming that  
24 Kars 4 Kids was not advertising in Texas during that  
25 time?

1 COOK - HIGHLY CONFIDENTIAL

2 A. Not advertising in Texas?

3 Q. Correct.

4 A. I don't know if they were or not. I was  
5 talking about states outside of Texas, not Texas.

6 Q. Right. But there was a more precipitous  
7 decline in states outside of Texas than inside Texas?

8 A. Right.

9 Q. You seem to be citing Kars 4 Kids advertising  
10 as a possible explanation for that decline outside of  
11 Texas. And so I'm wondering, then, why didn't Kars 4  
12 Kids advertising have the same effect on donations in  
13 Texas?

14 A. Right. I -- I couldn't tell you that.

15 Q. Do you know if Kars 4 Kids was advertising in  
16 Texas during that time?

17 A. I've seen some of their advertising expense  
18 schedules, but I don't recall the by-state amounts or if  
19 they're shown.

20 Q. Would it matter to your opinion one way or --  
21 withdrawn.

22 Would it matter to any of the opinions  
23 expressed in your report one way or the other if Kars 4  
24 Kids was or was not advertising in Texas during that  
25 period of time?

1 COOK - HIGHLY CONFIDENTIAL

2 A. No.

3 Q. Turning back to the graph on page 3 of your  
4 opening report, which is Exhibit 1. It looks like by  
5 2011, America Can!'s donations from outside of Texas had  
6 almost disappeared entirely; is that right?

7 A. Right. 2011 they've declined to a very small  
8 amount and then decline again in '12 and '13.

9 Q. And -- I mean, is it fair to say they've almost  
10 disappeared entirely?

11 A. Right. They -- I mean, I can't tell again on  
12 the scale, but they're probably below 200 in 2011.

13 Q. So would you call that almost disappearing  
14 entirely?

15 MS. YANAROS WILDE: Objection. Asked and  
16 answered.

17 A. I think we're just -- we're mincing words here.  
18 I'd say yeah, you could probably say that, relative to  
19 having been at 4,000 and relative to Kars 4 Kids donation  
20 levels. And in some states, it did disappear entirely.  
21 They got zero donations in that year. So I think that's  
22 probably a fair statement.

23 Q. I mean, the reason I ask is because those were  
24 actually your words.

25 A. Right. I -- I know that.

1 COOK - HIGHLY CONFIDENTIAL

2 Q. I wanted to make sure you were still of that  
3 opinion.

4 A. Yes.

5 Q. Is it fair to say that in each year between  
6 1997 and 2017, the majority of America Can!'s donations  
7 came from Texas?

8 A. Yes.

9 Q. Is it fair to say that in each year between  
10 1997 and 2017, America Can! received over two times as  
11 many donations from Texas as it received from the rest of  
12 the country combined?

13 A. Yes.

14 Q. And isn't it the case that in some years,  
15 America Can!'s donations from Texas were several times  
16 more than its donations from the rest of the country  
17 combined?

18 A. Yes. If you just look at it from a static  
19 basis, all those things you are saying are correct. But  
20 that doesn't take into account trends.

21 Q. What do you mean by a static basis and that  
22 doesn't take into account trends?

23 A. So as I point out in the report, the growth  
24 from the non-Texas donations in '06 and '07, after the  
25 big decline from the IRS ruling, the growth in the

1 COOK - HIGHLY CONFIDENTIAL

2 non-Texas donations is at a much faster pace than Texas.  
3 So when it peaks at 4,000 units in 2007, if it had  
4 continued to grow at that rate, then perhaps it would  
5 have gotten past Texas. But for some reason, after 2007,  
6 the non-Texas donations continue to decline until they  
7 become, as I say in the report, they essentially  
8 disappear, whatever the words are.

9 Q. Okay. Putting aside what could have happened  
10 under some hypothetical set of circumstances, just  
11 looking at the historical numbers of donations that  
12 America Can! has received, in many years it was several  
13 times the -- America Can! received donations from outside  
14 of Texas in many years that were a multiple of several  
15 times the donations it received from Texas; is that  
16 correct?

17 A. Yes.

18 Q. So earlier we talked about the difference  
19 between correlation and causation. Do you remember that?

20 A. Yes.

21 Q. Now, in the paragraph below your chart, you say  
22 that the decline in America Can!'s donations from outside  
23 of Texas after 2007 corresponds with Kars 4 Kids' growth  
24 in the same non-Texas markets; is that right?

25 A. Yes.

1 COOK - HIGHLY CONFIDENTIAL

2 Q. Okay. Now, those were your words, corresponds  
3 with. Correct?

4 A. Yes.

5 Q. What did you mean by that?

6 A. Exactly what it says. I chose that word  
7 specifically because I couldn't say that it caused.  
8 Although I would say that it has some impact. I believe  
9 it caused some portion of the decline. But -- and I say  
10 that elsewhere in the report. But I can't say the entire  
11 decline was caused by, so I said it corresponds with.

12 Q. And your belief that it's likely that some  
13 portion of the decline was caused by the growth of  
14 America Can!'s donations is based on the evidence we  
15 discussed earlier, the similarity of markets, the  
16 similarity of methods and channels, that both are  
17 charities intended to help children; is that right?

18 A. I think you said America Can!'s.

19 Q. Oh, I may have misspoke.

20 A. That's okay. Substitute Kars 4 Kids for that,  
21 and then, yes, I think that's -- that's correct.

22 Q. Yes. Yes. You are correct. I was asking  
23 about the growth of Kars 4 Kids.

24 So in your opening report on the sentence that  
25 goes from page 2 to page 3, you say: K4K's market entry

1 COOK - HIGHLY CONFIDENTIAL

2 and growth in each of CFK's markets, along with its high  
3 advertising spend, likely had an effect on CFK's  
4 donations and inability to return to previous levels.

5 Do you see that?

6 A. Yes.

7 Q. And then looking at page 3 of your reply  
8 report, Exhibit 2 -- let me know when you're there.

9 A. Yes.

10 Q. The second sentence on that page is: Is  
11 inescapable that Kars 4 Kids entry into the donation  
12 market took donations that otherwise would have gone to  
13 America Can! .

14 Do you see that?

15 A. I'm sorry, what page in that report?

16 Q. That's page 3 of your reply report, the second  
17 sentence.

18 A. Yes.

19 Q. So what caused you to go from likely had an  
20 effect to it is inescapable that there was an effect?

21 A. Because Mr. Hall criticizes my use of the word  
22 "likely," even though that's the term that the Court used  
23 in Banjo Buddies, and even though he uses that same term  
24 "likely" and "potential" later on in his report with  
25 respect to advertising. And then he goes to great

1 COOK - HIGHLY CONFIDENTIAL

2 lengths to try and -- or to attempt to show, it appears  
3 to me, that Kars 4 Kids had no impact. He does things  
4 like look -- he says multiple times that America Can!  
5 actually increased its market share and America Can! grew  
6 sales over a certain period of time. So I wanted to get  
7 on the record in response to that that not only is it  
8 likely; it's inescapable. You know, you can't say that I  
9 know for a fact based on talking to a customer who was  
10 confused or, you know, for whatever reason decided to --  
11 or its donation was changed or diverted from one  
12 organization to the other, because that evidence doesn't  
13 exist. There's no survey to do that. But what we do  
14 have is two charitable organizations vying for automobile  
15 donations in the same market, using the same advertising  
16 methods, limited number of vehicles to be donated. So  
17 that's why I would say it's inescapable that some have  
18 gone to Kars 4 Kids as opposed to America Can!.

19 Q. But you did testify a few moments ago that you  
20 couldn't say that Kars 4 Kids' growth in the same  
21 non-Texas markets caused a decline in America Can!'s  
22 donations in those markets, right? I'm paraphrasing.

23 A. Right, right. I think we need to look at the  
24 words, because I chose my words carefully so that I  
25 wouldn't misstate. So the words I used, the decline

1 COOK - HIGHLY CONFIDENTIAL  
2 corresponds with K4K's growth in the same non-Texas  
3 markets. And then in answering that when you asked me  
4 what does that mean, I said I didn't say it caused  
5 because I didn't know how much it caused. But I did say  
6 that it's inescapable that some portion was caused,  
7 because they're in the same markets vying for a finite  
8 number of vehicles. So if one is growing and the other  
9 is declining, then that's why I am opining in this  
10 manner.

11 Q. So you have -- you believe that Kars 4 Kids'  
12 growth did cause a decline in America Can!'s donations,  
13 but you have no ability to quantify the amount of that  
14 decline in America Can!'s donations?

15 A. Yes. I've said that many times throughout the  
16 deposition.

17 Q. And so it could be one donation, for all you  
18 know?

19 A. I'm sure it's more than one.

20 Q. What makes you sure of that?

21 A. Because they're -- they're getting millions of  
22 donations -- or I'm sorry, thousands of donations. So I  
23 would assume it's more than one.

24 Q. Okay. But you're assuming that. You've done  
25 no --

1 COOK - HIGHLY CONFIDENTIAL

2 A. Right.

3 Q. -- analysis to support that?

4 A. No, I agree, there's no survey of it. Mr. Hall  
5 or Kars 4 Kids could have conducted surveys of donors and  
6 potential donors, and they didn't do that. So we don't  
7 have direct evidence of actual cars being diverted. But  
8 we have markets, and we know that this is in the same  
9 market. And, again, I can go over the factors again,  
10 same advertising methods, same general charitable cause  
11 to benefit kids, all of those things speak to whether  
12 sales would be diverted -- or donations would be  
13 diverted.

14 Q. And just to clarify your testimony again, when  
15 you say markets, you mean states, correct?

16 A. Yeah, I'm talking about a geographic market.  
17 When I say market, a geographic market.

18 Q. As you said, you haven't done any analysis of  
19 whether that's an appropriate definition of a market?

20 A. I don't think it really matters. I mean, if  
21 you say -- if both organizations count their number of  
22 donations by state, so take the state of Arizona, for  
23 instance, that is a market where they put money into to  
24 advertise and where they get vehicles from. And they  
25 track their donations by state. So to me, that is a

1 COOK - HIGHLY CONFIDENTIAL

2 market. Or we can just talk about the United States as a  
3 whole. If it bothers you that, you know, we're getting  
4 too specific on states, we can, you know, look at the  
5 United States as a whole.

6 Q. Do you know whether either party tracks their  
7 donations by metropolitan area?

8 A. I haven't seen -- well, maybe I have. Most of  
9 what I've seen, and I recall now, it's always by state.

10 Q. If a party did track their donations by  
11 metropolitan area, would you think then that metropolitan  
12 area is an appropriate way to define a market?

13 A. That would be --

14 MS. YANAROS WILDE: Objection. Asked and  
15 answered.

16 A. I would say that would be a submarket. I mean,  
17 you can keep cutting it down by geography. It doesn't  
18 affect my opinion at all. I mean, I presume if Kars 4  
19 Kids is in a major metropolitan area, like Maricopa  
20 County, the Phoenix area here, that's the largest  
21 metropolitan area in the state, then that would be where  
22 most of the donations would likely come from. And so you  
23 would presume if that's where the market is for cars,  
24 then that's where the companies are going to advertise  
25 and seek for donations.

1 COOK - HIGHLY CONFIDENTIAL

2 Q. (BY MR. LITTERINE-KAUFMAN:) Sure, but if,  
3 let's say, Kars 4 Kids were in a given metropolitan area  
4 advertising there, and America Can! was not advertising  
5 in that metropolitan area, then you could not conclude,  
6 am I right, that donations from that metropolitan area  
7 were diverted from America Can! to Kars 4 Kids?

8 A. Right. I would have to revisit my -- my  
9 analysis. If you could show me, if Mr. Hall could point  
10 out or someone could point out some evidence, I would  
11 have to look at that and see if there was actually  
12 advertising being done in a market where Kars 4 Kids got  
13 donations and America Can! was not in that particular  
14 locale and didn't do any advertising.

15 MR. LITTERINE-KAUFMAN: I think it's been  
16 about an hour again, so why don't we take another short  
17 break.

18 THE VIDEOGRAPHER: We are now going off the  
19 record. The time is 11:48 a.m. on March 15, 2018.

20 (Recess taken at 11:48 a.m. to 12:07 p.m.)

21 THE VIDEOGRAPHER: This is Tape Number 3 of  
22 the deposition of Bryce Cook. We are now going back on  
23 the record. The time is 12:07 p.m. on March 15, 2018.

24 Q. (BY MR. LITTERINE-KAUFMAN:) Earlier we were  
25 discussing different pieces of evidence that you believe

1 COOK - HIGHLY CONFIDENTIAL

2 show that donations were diverted from America Can! to  
3 Kars 4 Kids. Do you recall that?

4 A. Yes.

5 Q. And I think one of the factors you mentioned  
6 that we haven't yet discussed is that Kars 4 Kids and  
7 America Can! are competing for a finite number of  
8 vehicles. Is that correct?

9 A. Yes.

10 Q. Okay. What did you mean by competing for a  
11 finite number of vehicles?

12 A. There's not an infinite number of vehicles.  
13 Finite means a certain number.

14 Q. It's true, is it not, that Kars 4 Kids can  
15 increase the number of donations in a market by entering  
16 the market?

17 A. Yes. In fact, I acknowledge that in my second  
18 report.

19 Q. Right. So Kars 4 Kids can get people to donate  
20 vehicles who would not otherwise have donated vehicles?

21 A. I would agree to that.

22 Q. Have you done any analysis of how many of the  
23 donations Kars 4 Kids have received are donations that  
24 would not have been made but for Kars 4 Kids' entry into  
25 a market?

1 COOK - HIGHLY CONFIDENTIAL

2 A. No. As I clearly indicate in my report, I've  
3 done no quantification of the impact of Kars 4 Kids on  
4 America Can! donations.

5 Q. All right. If you could turn to your reply  
6 report, which is Exhibit 2, page 13.

7 A. Okay.

8 Q. What does Table 7 on this page, which is titled  
9 Donated Vehicles Market Share Overtime, show?

10 A. It shows the donated vehicles for the US as  
11 compiled by the IRS. This is a data source that Mr. Hall  
12 also used. It shows America Can!'s, Kars 4 Kids, and all  
13 other donors or organizations that take donations, and  
14 then it shows the relative market share of each.

15 Q. And I think you just said this, but to be  
16 clear, so the US totals column is taken from IRS  
17 publications; is that correct?

18 A. Well, the dollar amount. We had to estimate  
19 the number of units because the IRS doesn't have units,  
20 but the dollar amount.

21 Q. But the US total column is not in any way based  
22 on the values in the America Can! column or the Kars 4  
23 Kids column?

24 A. Yeah, we had to -- as attached in my Exhibit C,  
25 we had to estimate the unit donations based on a value

1 COOK - HIGHLY CONFIDENTIAL

2 per donation. And I believe in this case, it was based  
3 on the only values that we had available, which is the  
4 range between America Can! and Kars 4 Kids.

5 Q. So would a change in either the number of  
6 vehicles donated to America Can! or the number of  
7 vehicles donated to Kars 4 Kids affect the value in the  
8 US total column?

9 A. Well, actually I may need to amend my response.  
10 My footnote says that the units ties directly to US total  
11 units per IRS non-cash individual contribution reports.  
12 So now I'm not so sure that we did that estimate. I know  
13 we did with respect to Wheels for Wishes. We had to  
14 estimate that. But I'm not sure that we did that for the  
15 IRS. So -- and I just don't recall now if the IRS gave  
16 actual units as well as dollar amount claimed.

17 Q. Okay. So if the IRS publication cited in  
18 Footnote 1 of Attachment C of your reply report give  
19 units of donations, then changes to the values in the AC  
20 and K4K column in Table 7 would not change the values in  
21 the US total column; is that correct?

22 A. That's correct. Yeah.

23 Q. And I think we've been sort of assuming this,  
24 but just to make it explicit, what are the figures in the  
25 column labeled K4K?

1 COOK - HIGHLY CONFIDENTIAL

2 royalty would be in this case?

3 A. Correct.

4 Q. On page 9 of your opening report, you say,  
5 quote: CFK would be unwilling to license the mark for  
6 anything less than the incremental profit it earns on its  
7 donations.

8 Do you see that?

9 A. Yes.

10 Q. What's your basis for that statement?

11 A. Basic economics, that a company who wants to  
12 earn a profit, or in this case it's a non-profit that  
13 wants to earn a certain -- well, I'll use the term  
14 profit, revenue minus expense, would be unwilling to  
15 license away rights that would impinge on that profit  
16 without getting something in return. So if they felt --  
17 if America Can! felt that giving Kars 4 Kids a license to  
18 use the mark in its territory, such as the entire US,  
19 would cause it to lose sales, then you know, that just  
20 wouldn't make business sense. It wouldn't be  
21 economically rational to do so without getting a royalty  
22 that equated to that amount.

23 Q. Did you discuss with Mr. Wentworth or anyone  
24 else at America Can! the circumstances under which they  
25 would be willing to license what they consider their

1 COOK - HIGHLY CONFIDENTIAL

2 mark?

3 A. No.

4 Q. Your report also discusses corrective  
5 advertising as a potential measure of monetary relief; is  
6 that right?

7 A. Yes.

8 Q. And you haven't performed an analysis of how  
9 much corrective advertising would be needed; is that  
10 correct?

11 A. That's correct. Other than to give a sort of  
12 rough approximation in my reply report that using as a  
13 measure of correcting advertising the actual advertising  
14 expense of Kars 4 Kids. The assumption being that  
15 whatever was spent by Kars 4 Kids, the same amount or  
16 more would need to be spent by America Can! to correct  
17 that perception in the marketplace and repair what has  
18 been incorrectly portrayed.

19 Q. Do you believe that the entire amount that Kars  
20 4 Kids has spent on fundraising is an accurate measure of  
21 the amount of corrective advertising that would be  
22 needed?

23 A. You said the entire amount on fundraising? Or  
24 do you mean advertising fundraising?

25 Q. I meant advertising fundraising. Thank you.

1 COOK - HIGHLY CONFIDENTIAL

2 A. I could see where some people might think  
3 that's a reasonable approximation of what would be  
4 required. It would depend on the facts and circumstances  
5 of the markets that they're in and the consumer, how  
6 educated and sophisticated they are. It would take a --  
7 probably a more in-depth market analysis, but I think,  
8 you know, as a rough approximation, that offers a good  
9 starting point.

10 Q. A good starting point or a good measure of the  
11 amount of corrective advertising?

12 A. It's a rough measure. May be a good starting  
13 point. Let me see -- I'm going to check the language of  
14 my report --

15 Q. Feel free.

16 A. -- to see if I said it was a good measure. I  
17 just want to see exactly how I stated that.

18 So I just say that measure. I don't qualify it  
19 as to whether it's good or rough. And I just say that  
20 measure is based on one methodology. And as I've already  
21 expressed to you, it's my opinion that's a rough  
22 approximation, rough measure.

23 Q. Just reading this final paragraph of your reply  
24 report, it seemed to me like you were stopping short of  
25 adopting this methodology yourself and opining that this

1 COOK - HIGHLY CONFIDENTIAL

2 was a reliable methodology by which to calculate  
3 corrective advertising. Is that -- is that the case or  
4 not?

5 A. I think it's a measure that informs -- that  
6 would help inform the Court's decision. So it's a  
7 measure that I wanted to put out there. I'm not opining  
8 that this is how much it will take to correct the  
9 misperception and the confusion in the marketplace. I am  
10 simply saying as a basis of a reasonable assumption, one  
11 could assume that it would take as much advertising to  
12 correct as the original advertising.

13 Q. One could assume that. Do you assume that?

14 A. It's an assumption. I don't know if -- I don't  
15 have the basis to say if that's how much it would take.  
16 I've already said that.

17 Q. Turn to page 16 of your reply report.

18 A. Okay.

19 Q. So here you describe your efforts to  
20 investigate the legitimacy of the website  
21 DonationsTips.com, is that fair?

22 A. Yes.

23 Q. And the first step in your investigation was to  
24 do a WHOIS search with the domain name registrar for the  
25 domain DonationsTips.com; is that right?

1 COOK - HIGHLY CONFIDENTIAL

2 A. Yes.

3 Q. And then that provided you with an address; is  
4 that right?

5 A. It provided a lot of information. Probably  
6 about 50 or 60 different lines of information regarding  
7 the registration, including the name of the registrant,  
8 the address of the registrant, the organization of the  
9 registrant. I can't remember if there was other contact  
10 information, but that was sufficient for us to make -- to  
11 look up the organization and the individual, and we were  
12 able to find information.

13 Q. All right. And then you -- one of the pieces  
14 of information, I think you said, was an address; is that  
15 right?

16 A. Yes.

17 Q. For the registrant?

18 A. Of the registrant organization. Yes.

19 Q. Okay. And you then cross-checked that address  
20 against several online maps; is that right?

21 A. Yes.

22 Q. Okay. And then you visited the website of the  
23 registrant organization that was listed with the domain  
24 name registrar; is that right?

25 A. Yes.

1 C E R T I F I C A T E

2

3 STATE OF ARIZONA )

4 )

5 COUNTY OF MARICOPA )

6

7 BE IT KNOWN that I took the foregoing  
8 deposition pursuant to Notice; that the witness was  
9 duly sworn by me; and that said transcript is a full,  
10 true, and accurate record of the proceedings; that the  
11 proceedings were taken down by me in shorthand and  
12 thereafter reduced to print under my direction; that I  
13 have acted in compliance with ACJA 7-206.

14 I CERTIFY that I am in no way related to any  
15 of the parties hereto nor am I in any way interested in  
16 the outcome hereof.

17 Pursuant to request, notification was provided  
18 that the deposition is available for review and  
19 signature. DATED this 27th day of March, 2018.

20

21

22

23

24



25 Amy L. Zoller

# Exhibit 2

Redacted

**From:** Kelly Dickerson [kgreeson@carsforkids.org]  
**Sent:** 2/14/2013 9:39:14 AM  
**To:** Jennifer Kitchens [JKitchens@carsforkids.org]  
**CC:** Malcolm Wentworth TC [mwentworth@texanscan.org]  
**Subject:** RE: 144480 - add on in Carrollton

I called Copart. They don't have this car in their inventory and they don't have it scheduled. I called the donor to follow up but had to leave a message.

**Kelly Dickerson**

Assistant Director of Cars for Kids | Texans Can Cars for Kids | 1911 E. Division St | Arlington, TX 76011 | p [817 274 5437](tel:8172745437) | f 817 469 1945 | [www.carsforkids.org](http://www.carsforkids.org)

**Texans Can Academies** - Graduating thinkers by giving them a second chance with help from people like you!

---

**From:** Jennifer Kitchens  
**Sent:** Wednesday, February 13, 2013 6:10 PM  
**To:** Kelly Dickerson  
**Cc:** Malcolm Wentworth TC  
**Subject:** FW: 144480 - add on in Carrollton  
**Importance:** High

Kelly,

I just spoke to this donor and he definitely intended for us to have this donation. He said he will call them in the morning to let them know that he wanted us to have this car. Please call Copart first thing in the morning to see if they have this vehicle and let them know that it should have been our donation and see what they need to transfer into our name. Please let donor know as soon as you can if he needs to contact Copart himself and also to verify that he cancelled with Kars 4 Kids. If we get it all worked out and transferred over to us, please send him some Mavs tickets for all of his help.

Thanks,

**Jennifer Kitchens**

Director | Texans Can Cars for Kids | 1911 E. Division St. | Arlington, TX 76011 | p (817)274-5437 | f (817)469-1945 | c (214)882-7359 | [www.carsforkids.org](http://www.carsforkids.org)

**Texans Can Academies** - Graduating thinkers by giving them a second chance with help from people like you!

**From:** Malcolm Wentworth [mailto:[mwentworth@texanscan.org](mailto:mwentworth@texanscan.org)]  
**Sent:** Wednesday, February 13, 2013 3:41 PM  
**To:** Jennifer Kitchens  
**Subject:** Fwd: 144480 - add on in Carrollton

Can you please work on this? Contact the donor and see if their intent was to donate to us we could help get the vehicle to us if they want.

----- Forwarded message -----

From: **Dori Grecu** <[dgrecu@carsforkids.org](mailto:dgrecu@carsforkids.org)>

Date: Wed, Feb 13, 2013 at 2:43 PM

Subject: 144480 - add on in Carrollton

To: information <[info@carsforkids.org](mailto:info@carsforkids.org)>

Pickup canceled: Sherryl called and said Trey called the donor on this add on and the donor told him we had already came and picked up the vehicle today, the driver never went out on this run. I called the donor and discovered that he made a donation with us and also KARS FOR KIDS, he apologized for the mix up because he thought he was donating to the Dallas Can. I called Titan and both Sherryl and Lois are aware the add on has been cancelled. This is NOT a dry run.

**Dori Grecu**

Donation Specialist | Texans Can Cars for Kids | 1911 E. Division St. | Arlington, TX 76011 | (972)/(817)274-5437 -- Office  
| (817)469-1946 -- Fax

**Texans Can Academies** - Graduating thinkers by giving them a second chance with help from people like you!

--

Malcolm Wentworth

Chief Operating Officer

Texans Can

325 W. 12th St

Dallas, TX 75208

214-878-2153

[www.TexansCan.org](http://www.TexansCan.org) Corporate

[www.CarsforKids.org](http://www.CarsforKids.org) Cars for Kids Program

-----  
Confidential Notice: This email message, including all attachments, is for the sole use of the intended recipient(s) and may contain confidential student information. Unauthorized use or disclosure is prohibited under the federal Family Education Rights and Privacy Act (20 U.S.C. §1232g; 34 CFR Part 99). If you are not the intended recipient, you may not use, disclose, copy or disseminate this information. Please contact the sender by reply email and destroy all copies of the original message, including attachments.

Aviso confidencial: Este mensaje de correo electronico, incluyendo sus anexos, es para uso exclusivo del destinatario, o destinatarios, al que esta dirigido y es posible que contenga informacion confidencial del estudiante. El uso o divulgacion no autorizado queda prohibido de conformidad con la Ley de Derechos y Privacidad de Educacion de la

Familia (Family Education Rights Privacy Act- 20 U.S.C. §1232g; 34CFR Part 99). Si usted no es el destinatario al que se dirigir este mensaje, usted no puede utilizar, divulgar, copiar o difundir esta informacion. Por favor pongase en contacto con el remitente respondiendo via correo electronico y destruya todas las copias del mensaje original, incluyendo los anexos.

Anti-Discrimination Notice: It is the policy of Texans Can! not to discriminate on the basis of race, color, national origin, gender or handicap in its vocational programs, services or activities as required by Title VI of the Civil Rights Act of 1964, as amended; Title IX of the Education Amendments of 1972; and Section 503 and 504 of the Rehabilitation Act of 1973, as amended.

Aviso antidiscriminatorio: La politica de Texans Can! es no discriminar en base a raza, color, origen nacional, genero o discapacidad en sus programas, servicios o actividades vocacionales tal como lo obliga la Seccion VI de la Ley de Derechos Civiles (Civil Rights Act) de 1964, conforme a sus enmiendas; Seccion IX de las Enmiendas de Educacion (Education Amendments) de 1972; y la Seccion 503 y 504 de la Ley de Reh

---

**From:** Jennifer Kitchens [JKitchens@carsforkids.org]  
**Sent:** 3/23/2015 10:47:28 AM  
**To:** donations [donations@carsforkids.org]  
**Subject:** FW: Your Messages

I spoke to Copart and they couldn't locate this car in their inventory based on the limited info that I had. So I called Kars 4 Kids, and they said they have this car & confirmed that Copart picked it up but wouldn't give me any other information. I called the donor back and left him a voicemail to return my call. I will see if he is willing to call them and cancel the donation with them and get the VIN # so I can call Copart and have them located it that way and move it to our account.

I will update once he calls me back.

Thanks,

Jennifer Kitchens

Director of Cars for Kids | America Can! Cars for Kids| 1911 E. Division St | Arlington, TX 76011 | p 817 274 5437 | f 817 469 1945 | [www.WriteOffTheCarNotTheKid.org](http://www.WriteOffTheCarNotTheKid.org)

**Supporting Texans Can Academies – Remember write off the car, not the kid!**

**From:** Jennifer Kitchens

**Sent:** Sunday, March 22, 2015 12:53 PM

**To:** donations

**Subject:** Fwd: Your Messages

He called back and he said he intended to donate to us but thinks he was duped by another company. I will call Copart & IAAI tomorrow to see if either picked up this car in Corpus Christie and find out who submitted it. He said he will call who ever it is and cancel it with them and give it to us because we are who he wanted to give it to. He said he Googled us and clicked on a link and filled out an online form and got a return email Saying thanks for the donation and he would be getting a vacation voucher which he thought was odd. He never actually spoke to anyone at the donation company, just a wrecker service called Lamar towing who picked up his car.

Sent from my iPhone

Begin forwarded message:

**From:** <[service@alliancecommunications.com](mailto:service@alliancecommunications.com)>

**Date:** March 22, 2015 at 2:19:46 AM CDT

**To:** <[donations@carsforkids.org](mailto:donations@carsforkids.org)>

**Subject:** Your Messages

=====0000192701=====

Sun 22-Mar-15 01:18a

Leah 3/22/2015 2:08:18 AM

UCN: 12633540

CALLTYPE: | OTHER CALLS |

| CALLER: [REDACTED]

| PHONE: [REDACTED] |

| ALT #: [REDACTED]

CALLER ID: [REDACTED]

| EMAIL: [REDACTED] |

| MESSAGE: HE DONATED A CAR ABOUT A  
WEEK AGO AND NOW THINKS HE MAY HAVE  
BEEN SCAMMED. |

DISPATCH NOTES: TEXT SENT TO JORDAN

03/22/2015 02:06A LEA

---

Message History Account: 192701

Taken: Sun 22-Mar-2015 2:06a LEA

Serial#: 1

=====0000192701=====

**From:** Dori Grecu [dgrecu@carsforkids.org]  
**Sent:** 1/22/2015 4:39:54 PM  
**To:** Jennifer Kitchens [JKitchens@carsforkids.org]; Coraima Lopez [CLopez@carsforkids.org]  
**CC:** donations [donations@carsforkids.org]  
**Subject:** RE: Lot# 15001515 Clm# 515-161694, Heather Kay

Here's Kathy's reply from Asset Support:

Hello Dori,

I want to help in any way I can. I've contacted the yard to have them call the donor to verify she wants the vehicle to go to your charity.  
Then she will need to call the other charity and let them know she wants it to go to you.

I think this will clear this confusing situation for all parties. What do you think?

CORAIMA,

I've put a follow up date of 1/23. Please check and make sure Copart is taking care of our donation; they are supposed to cancel the donation with Kars and put ours in inventory.

Thanks,

Dori Grecu  
Donation Supervisor/Dispatcher | America Can Cars for Kids | 1911 E. Division St. | Arlington, TX 76011 |  
p (817)274-5437 - f (817)469-1945 - [www.CarsforKids.org](http://www.CarsforKids.org)  
Supporting Texans Can Academies - Remember write off the car, not the kid!

-----Original Message-----

**From:** Jennifer Kitchens  
**Sent:** Thursday, January 22, 2015 4:32 PM  
**To:** donations  
**Subject:** FW: Lot# 15001515 Clm# 515-161694, Heather Kay

What's this status on this?

Jennifer Kitchens  
Director of Cars for Kids | America Can! Cars for Kids| 1911 E. Division St | Arlington, TX 76011 | p 817 274 5437 | f 817 469 1945| [www.WriteOffTheCarNotTheKid.org](http://www.WriteOffTheCarNotTheKid.org)

Supporting Texans Can Academies - Remember write off the car, not the kid!

-----Original Message-----

**From:** Dori Grecu  
**Sent:** Thursday, January 22, 2015 3:04 PM  
**To:** Marketing Asset Support (AssetSupport2@Copart.Com)  
**Cc:** Information  
**Subject:** FW: Lot# 15001515 Clm# 515-161694, Heather Kay

Kathy,

I could really use your help, there's a confusion here. I just spoke with our donor Heather Kay and she intended to donate to us and quite possibly Kars for Kids may have tried to take the donation. If she called them, it was by pure accident. She told me that your driver picked up the vehicle on Monday, and as far as she's concerned, she gave the vehicle to us. Please make sure that we get credit for this donation. If there's a duplicate assignment out there with Kars, please cancel it; Ms. Kay made it very clear she wants to make her donation to America Can Cars for Kids. Please receive this vehicle in inventory under AMC3. Please let me know if you have any questions.

Thank you,

Dori Grecu  
Donation Supervisor/Dispatcher | America Can Cars for Kids | 1911 E. Division St. | Arlington, TX 76011 |  
p (817)274-5437 - f (817)469-1945 - [www.CarsforKids.org](http://www.CarsforKids.org) Supporting Texans Can Academies - Remember write off the car, not the kid!

-----Original Message-----

From: Dori Grecu  
Sent: Tuesday, January 20, 2015 1:12 PM  
To: 'Marketing Asset Support'; donations  
Cc: Information  
Subject: RE: Lot# 15001515 Clm# 515-161694, Heather Kay

Please diary it out for a couple of days while we are trying to reach the donor.

Thank you,

Dori Grecu  
Donation Supervisor/Dispatcher | America Can Cars for Kids | 1911 E. Division St. | Arlington, TX 76011 |  
p (817)274-5437 - f (817)469-1945 - [www.CarsforKids.org](http://www.CarsforKids.org) Supporting Texans Can Academies - Remember write  
off the car, not the kid!

-----Original Message-----

From: Marketing Asset Support [mailto:[Assetsupport2@Copart.Com](mailto:Assetsupport2@Copart.Com)]  
Sent: Tuesday, January 20, 2015 12:52 PM  
To: donations  
Cc: Information; Marketing Asset Support  
Subject: FW: Lot# 15001515 Clm# 515-161694, Heather Kay

Hello Cars for Kids,  
Please note this donor has decided to give her vehicle to a different charity.  
Thanks,

Kathy Gilland  
Asset Support Supervisor  
Copart  
(972) 391-5453 office

-----Original Message-----

From: Tina Roseboom  
Sent: Tuesday, January 20, 2015 12:09 PM  
To: DL- Marketing Asset Support  
Subject: Lot# 15001515 Clm# 515-161694

Hello,

We need to cancel this assignment as owner decided to go with another charity.

Many thanks,

Tina Roseboom  
Office Supervisor  
Copart Yard 68

---

**From:** Jordan Kitchens [jokitchens@carsforkids.org]  
**Sent:** 12/7/2015 1:04:49 PM  
**To:** Information [Info@carsforkids.org]  
**Subject:** 170685 FYI

I was taking this donation, and the donor's first question was did we already have a donation setup for them. I could not find them in our database so I setup a new donation. The donor's niece was calling in for her aunt, but while she was there her aunt wanted to know why we hadn't already picked up the vehicle. Confused, I looked under different possible names that we might possibly have, but we did not have a donation for this donor. So then her aunt started off with a toll free number 877-, I informed her that was not our toll free number but the number for Kars4Kids. She thought we were the same company because the person she spoke to said made it seem like they were with the Can Academies. I informed her they are not affiliated with the Can Academies and they are based out of New Jersey. She said they were supposed to pickup their vehicle this morning, but never showed. I called Cris and he said he could be there within the hour to have it picked up. Donor wanted us to have the entire time, and will cancel with Kars4Kids. Skip is headed to the donor's pickup now.

Thank you,

Jordan Kitchens

Donation Specialist | America Can! Cars for Kids| 7100 Marvin D Love Fwy | Dallas TX 75237 | p 972-274-5437 | f 972-572-1243 | [www.carsforkids.org](http://www.carsforkids.org)

**Supporting Texans Can Academies – Remember write off the car, not the kid!**

---

**From:** Jordan Kitchens [jokitchens@carsforkids.org]  
**Sent:** 10/6/2015 8:53:25 AM  
**To:** Information [Info@carsforkids.org]  
**CC:** donations [donations@carsforkids.org]  
**Subject:** RE: Please inactivate 168797

The donor called back and confirmed that his wife also submitted the vehicle for donation to another company, Kars4Kids. The donor apologized saying he did not know the difference between the two of us. When he and his wife were speaking about donating they both found a cars for kids and just assumed it was the same place. He will stick with them since they are picked up the vehicle.

Thank you,

Jordan Kitchens

Donation Specialist | America Can! Cars for Kids | 7100 Marvin D Love Fwy | Dallas TX 75237 | p [972-274-5437](#) | f 972-572-1243 | [www.carsforkids.org](http://www.carsforkids.org)

**Supporting Texans Can Academies – Remember write off the car, not the kid!**

**From:** Jordan Kitchens  
**Sent:** Tuesday, October 06, 2015 8:46 AM  
**To:** Information  
**Cc:** donations  
**Subject:** Please inactivate 168797

Please inactivate 168797 – when this donor originally thought about donating, he was submitting an online form and stopped when he noticed we were Texas based. Colin replied that we pick up donations nationwide, and the donor replied with the information to have the vehicle picked up. I submitted it to Copart, and then Copart sent an email stating the vehicle was already picked up by another company. We left messages trying to confirm the cancellation. I looked in Copart's notes, there is another lot number in there notes where it states another company picked this vehicle up, but because it does not belong to our seller code I cannot see who the other company is.

Thank you,

Jordan Kitchens

Donation Specialist | America Can! Cars for Kids | 7100 Marvin D Love Fwy | Dallas TX 75237 | p [972-274-5437](#) | f 972-572-1243 | [www.carsforkids.org](http://www.carsforkids.org)

**Supporting Texans Can Academies – Remember write off the car, not the kid!**



---

**From:** Erica Black [eblack@carsforkids.org]  
**Sent:** 1/20/2016 8:45:26 AM  
**To:** Jordan Kitchens [jokitchens@carsforkids.org]; Information [Info@carsforkids.org]  
**CC:** donations [donations@carsforkids.org]  
**Subject:** RE: Please inactivate 172321

Done.

FYI: This vehicle is in Illinois.

Erica Black

Assistant Director of Cars for Kids | America Can! Cars for Kids| 7100 Marvin D Love Frwy | Dallas, TX 75237 |  
p 972 274 5437 | f 972 542 1243 | www.carsforkids.org

**Supporting Texans Can Academies – Remember write off the car, not the kid!**

**From:** Jordan Kitchens  
**Sent:** Wednesday, January 20, 2016 8:44 AM  
**To:** Information  
**Cc:** donations  
**Subject:** Please inactivate 172321

Please inactivate 172321 – I followed up with the donor today for her VIN number, and the donor donated to Kars4Kids. She submitted the information to us and when Colin asked for the VIN she said she would call back with that information. Instead she went to Kars4Kids website thinking it was ours and entered the VIN and the information which created a donation for them. Copart picked up her car yesterday for Kars4Kids. The donor apologized for the mistake, she will stick with Kars4Kids this time since they already picked up the vehicle, and will consider us again in the future.

Thank you,

Jordan Kitchens

Call Center Supervisor | America Can! Cars for Kids| 7100 Marvin D Love Fwy | Dallas TX 75237 | p 972-274-5437 | f 972-572-1243 |  
www.carsforkids.org

**Supporting Texans Can Academies – Remember write off the car, not the kid!**

---

**From:** Jordan Kitchens [jokitchens@carsforkids.org]  
**Sent:** 7/22/2015 3:52:38 PM  
**To:** [REDACTED]  
**Subject:** RE: Your Online Donation - 166946

It's not a problem at all Sir, we definitely do appreciate the consideration. If something does happen or if you just have further questions in the future about our organization, please do not hesitate to ask. Thank you again!

Have a terrific day,

Jordan Kitchens

Donation Specialist | America Can! Cars for Kids | 7100 Marvin D Love Fwy | Dallas TX 75237 | p 972-274-5437 | f 972-572-1243 | [www.carsforkids.org](http://www.carsforkids.org)

**Supporting Texans Can Academies** – Remember write off the car, not the kid!

**From:** [REDACTED]  
**Sent:** Wednesday, July 22, 2015 3:38 PM  
**To:** Jordan Kitchens  
**Subject:** Re: Your Online Donation - 166946

Thanks for clarifying this Jordan. Sorry for the confusion/inconvenience but I didn't realize this was a separate company. As my car is already on the books with Kars4Kids I will follow up with them but will contact you should I run into any issues.

Best regards,

[REDACTED]

On Wed, Jul 22, 2015 at 3:56 PM, Jordan Kitchens <[jokitchens@carsforkids.org](mailto:jokitchens@carsforkids.org)> wrote:

Good afternoon Sir,

Thank you so much for the information, your new donation reference number is 515-166946. I tried submitting your pickup with our tow company, Copart, but it looks like there is already an assignment with Kars4Kids to have the vehicle picked up for you. We are a separate organization from Kars4Kids. We will be happy to accept your donation for Cars for Kids, but we would need you to cancel the donation with them before we could submit the pickup. Unfortunately, we both use the same tow company for out-of-state donations, and only one can submit a pickup for a vehicle. If you would like to donate the vehicle to us please call Kars4Kids at [\(877\) 527-7454](tel:(877)527-7454) to cancel the donation; and we will be more than happy to have this vehicle scheduled for a convenient time for you.

Thank you again for the information, and I look forward to hearing from you!

Have a wonderful day,

Jordan Kitchens

Donation Specialist | America Can! Cars for Kids | 7100 Marvin D Love Fwy | Dallas TX 75237 | p 972-274-5437 | f 972-572-1243 | [www.carsforkids.org](http://www.carsforkids.org)

**Supporting Texans Can Academies** – Remember write off the car, not the kid!

**From:** [REDACTED]

**Sent:** Wednesday, July 22, 2015 2:11 PM

**To:** Jordan Kitchens <[jokitchens@carsforkids.org](mailto:jokitchens@carsforkids.org)>; Coraima Lopez <[CLopez@carsforkids.org](mailto:CLopez@carsforkids.org)>

**Subject:** Re: Your Online Donation - 166072

Dear Jordan and Coraima,

Thanks for your patience and following up on my original request to donate my car. I apologize for my unavailability but I have had a very hectic work schedule. I am planning to be at home this coming Friday July 24th and would like to arrange for pick up if possible. Please find below a detailed response to your info request.

Best regards,

Jonathan

1. Address to mail Tax receipt. [REDACTED]
2. Address to pick up the vehicle. [REDACTED]
3. Best time for the towing company to contact you to schedule pick up? 10am-5pm @ [REDACTED]
4. Color of the vehicle. Black
5. Vehicle Identification #. 1HGEJ8255WL105734
6. How did you hear about us? If TV or Radio, what station? Internet research
7. Are the tires good for towing? Yes
8. Is the vehicle accessible for a tow truck to back up to it? Yes
9. Will you have title and keys at the time of pick up? Yes

On Wed, Jul 15, 2015 at 9:59 AM, Jordan Kitchens <[jokitchens@carsforkids.org](mailto:jokitchens@carsforkids.org)> wrote:

Dear [REDACTED]

Thank you for considering donating to America Can Cars for Kids. We are definitely interested in your donation. We can arrange a free pick up that is convenient for you. All we need is a little additional information about your donation. If you'd like I can contact you to coordinate everything and make the donation process as smooth as possible. Or feel free to reply back with the following information if this option best fits your busy schedule.

1. Address to mail Tax receipt.
2. Address to pick up the vehicle.
3. Best time for the towing company to contact you to schedule pick up?
4. Color of the vehicle.
5. Vehicle Identification #.
6. How did you hear about us? If TV or Radio, what station?
7. Are the tires good for towing?
8. Is the vehicle accessible for a tow truck to back up to it?
9. Will you have title and keys at the time of pick up?

We know you have many charities to choose from and we appreciate that you are considering us. Your donation gives hope and helps keep students in school and earn their high school diploma. It is people like you, who truly make a difference.

If you are ready to schedule pick up please contact me at 866-835-5437 or we can complete the process via email.

Thank you again and have a great day,

Jordan Kitchens

Donation Specialist | America Can! Cars for Kids | 7100 Marvin D Love Fwy | Dallas TX 75237 | p 972-274-5437 | f 972-572-1243 | [www.carsforkids.org](http://www.carsforkids.org)

**Supporting Texans Can Academies – Remember write off the car, not the kid!**

---

**From:** Malcolm Wentworth [mwentworth@texanscan.org]  
**Sent:** 12/18/2012 10:42:52 PM  
**To:** CR Creative Group [cheryl@crcreativegroup.com]  
**CC:** Richard Marquez [RMarquez@texanscan.org]  
**Subject:** Re: Donor confused

Just looking for future. Thanks

Malcolm Wentworth  
Chief Operating Officer  
Texans Can  
325 W 12th St  
Dallas, TX 75208  
[www.texanscan.org](http://www.texanscan.org)  
[www.carsforkids.org](http://www.carsforkids.org)  
[www.texanscancars.org](http://www.texanscancars.org)

On Dec 18, 2012 10:41 PM, "CR Creative Group" <[cheryl@crcreativegroup.com](mailto:cheryl@crcreativegroup.com)> wrote:

All ads have been changed Malcolm there is nothing else I can do - Sorry

On 12/18/12 10:31 PM, Malcolm Wentworth wrote:

Long story here but just is donor said phone number difficult (kids) so her husband went on line after hearing our add for maverick tickets. Note this is also a repeat donor from 2010. Here is where the problem began. Husband went to kars 4 kids by mistake. Received call from donor tonight asking where her tickets were. We couldn't find it because she didn't donate to us. Now it gets interesting because the donor said the Copart driver responded yes to her question that he picked up for Dallas can JFK.

We tracked it down as Copart is picking up Kars 4 kids locally.

Donor is calling kars 4 kids and demanding return of her car. They told her she would be receiving her maverick tickets when they scheduled her pickup when she asked.

Bottom line while kids may sound good we need to stop using it and use the numbers 5437. Three donor complaints in 7 days.

Malcolm Wentworth  
Chief Operating Officer  
Texans Can  
325 W 12th St  
Dallas, TX 75208  
[www.texanscan.org](http://www.texanscan.org)  
[www.carsforkids.org](http://www.carsforkids.org)  
[www.texanscancars.org](http://www.texanscancars.org)

---

Confidential Notice: This email message, including all attachments, is for the sole use of the intended recipient(s) and may contain confidential student information. Unauthorized use or disclosure is prohibited under the federal Family Education Rights and Privacy Act (20 U.S.C. §1232g; 34 CFR Part 99). If you are not the intended recipient, you may not use, disclose, copy or disseminate this information. Please contact the sender by reply email and destroy all copies of the original message, including attachments.

Aviso confidencial: Este mensaje de correo electronico, incluyendo sus anexos, es para uso exclusivo del destinatario, o destinatarios, al que esta dirigido y es posible que contenga informacion confidencial del estudiante. El uso o divulgacion no autorizado queda prohibido de conformidad con la Ley de Derechos y Privacidad de Educacion de la

Familia (Family Education Rights Privacy Act- 20 U.S.C. §1232g; 34CFR Part 99). Si usted no es el destinatario al que se dirigir este mensaje, usted no puede utilizar, divulgar, copiar o difundir esta informacion. Por favor pongase en contacto con el remitente respondiendo via correo electronico y destruya todas las copias del mensaje original, incluyendo los anexos.

Anti-Discrimination Notice: It is the policy of Texans Can! not to discriminate on the basis of race, color, national origin, gender or handicap in its vocational programs, services or activities as required by Title VI of the Civil Rights Act of 1964, as amended; Title IX of the Education Amendments of 1972; and Section 503 and 504 of the Rehabilitation Act of 1973, as amended.

Aviso antidiscriminatorio: La politica de Texans Can! es no discriminar en base a raza, color, origen nacional, genero o discapacidad en sus programas, servicios o actividades vocacionales tal como lo obliga la Seccion VI de la Ley de Derechos Civiles (Civil Rights Act) de 1964, conforme a sus enmiendas; Seccion IX de las Enmiendas de Educacion (Education Amendments) de 1972; y la Seccion 503 y 504 de la Ley de Reh

Cheryl Rios  
CEO, CR Creative Group



[www.CRCreativeGroup.com](http://www.CRCreativeGroup.com)

Contact me: [@Cheryl.Rios1](https://www.twitter.com/Cheryl_Rios1)

[Like us on Facebook](#)

[View my profile on](#) [LinkedIn](#)

Designed with WiseStamp - [Get yours](#).

---

**From:** Malcolm Wentworth [mwentworth@texanscan.org]  
**Sent:** 12/19/2012 5:54:59 PM  
**To:** Richard Marquez [RMarquez@texanscan.org]; Cheryl Rios [Cheryl@CRCreativeGroup.com]  
**Subject:** Kars 4 Kids vehicle situation update

We were able to get the donors vehicle from Kars 4 Kids today. The donor called and complained and K4K released the vehicle to us. Copart has switched the vehicle to us.

The donor called back and she is so excited that we were able to get it back. Apparently this is her second donation and she had three relatives that have gone to Dallas Can and that is why she was so concerned with the donations going anywhere else.

--

Malcolm Wentworth  
Chief Operating Officer  
Texans Can  
325 W. 12th St  
Dallas, TX 75208  
214-878-2153  
[www.TexansCan.org](http://www.TexansCan.org) Corporate  
[www.CarsforKids.org](http://www.CarsforKids.org) Cars for Kids Program

---

**From:** Cathleen Egger [Cathleen.Egger@Copart.Com]  
**Sent:** 12/19/2012 12:04:12 PM  
**To:** Jennifer Kitchens [JKitchens@carsforkids.org]  
**CC:** Matt Richards [Matt.Richards@Copart.Com]; information [info@carsforkids.org]  
**Subject:** Re: Copart Lot # 29813582

The lot can be seller changed at that point.

Thank you,

Sent from my iPhone

On Dec 19, 2012, at 11:45 AM, "Jennifer Kitchens" <JKitchens@carsforkids.org> wrote:

Once they have been contacted, will you need to cancel the other lot# so we can put a new one in? Or can that lot # just be switched to our Seller#?

Thank you,

**Jennifer Kitchens**

Director | Texans Can Cars for Kids | 1911 E. Division St. | Arlington, TX 76011 | p (817)274-5437 | f (817)469-1945 | c (214)882-7359 | [www.carsforkids.org](http://www.carsforkids.org)

**Texans Can Academies** - Graduating thinkers by giving them a second chance with help from people like you!

---

**From:** Cathleen Egger [mailto:Cathleen.Egger@Copart.Com]  
**Sent:** Wednesday, December 19, 2012 11:42 AM  
**To:** Jennifer Kitchens  
**Cc:** Matt Richards; information  
**Subject:** Re: Copart Lot # 29813582

Jennifer,

I will have the yard contact Kars to get this completed.

Thank you,

Sent from my iPhone

On Dec 19, 2012, at 11:27 AM, "Jennifer Kitchens" <JKitchens@carsforkids.org> wrote:

Matt,

This assignment was entered by Kars 4 Kids, seller# C860. The donor intended this donation come to us and has spoken to Kars 4 Kids to cancel the assignment with them. I also spoke to Kars 4 Kids and they were going to contact you to let you know to switch the assignment to us. I have been trying to reach someone in your Grand Prairie office to see if this has been taken care of but no one is answering the phone. I tried submitting this car under our log in but it won't let me because this car is already submitted under another lot#. Please have someone contact me regarding this matter as soon as possible.

Thank you,

**Jennifer Kitchens**

Director | Texans Can Cars for Kids | 1911 E. Division St. | Arlington, TX 76011 | p (817)274-5437 | f (817)469-1945 | c (214)682-7359 | www. [carsforkids.org](http://carsforkids.org)

**Texans Can Academies** - Graduating thinkers by giving them a second chance with help from people like you!

--

**Cathleen Egger**

Regional Account Manager

Copart

505 Idlewild Road

Grand Prairie, TX 75051

(214) 263-4808 Office

Mobile

Fax

--

**Cathleen Egger**

Regional Account Manager

Copart

505 Idlewild Road

Grand Prairie, TX 75051

(214) 263-4808 Office

Mobile

Fax